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CMS delays final rule on Medicare overpayments

By [Lisa Schencker](#) | February 13, 2015

Providers will have to wait at least one more year for a final decision from the CMS on how far back it will go in collecting overpayments made by [Medicare^{\[1\]}](#).

CMS has extended by another year its timeline for publishing a final rule on procedures and policies for reporting and returning Medicare overpayments, according to a notice the CMS released Friday.

The proposed rule, published three years ago, alarmed many healthcare organizations in floating the idea that providers would be liable for returning Medicare overpayments going back as far as 10 years. The American Hospital Association and the Federation of American Hospitals criticized the proposal at the time, saying a 10-year time frame was unreasonable.

Under the Affordable Care Act, providers already must return overpayments within 60 days of identifying them. Failing to report overpayments can result in liability under the False Claims Act.

"Based on both public comments received and internal stakeholder feedback, we

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have determined that there are significant policy and operational issues that need to be resolved in order to address all of the issues raised by comments to the proposed rule and to ensure appropriate coordination with other government agencies," according to the CMS notice. "Specifically, the development of the final rule requires collaboration among both the Department of Health and Human Services' (HHS') Office of the Inspector General and the Department of Justice."

The notice reminded stakeholders, however, that they are still subject to current legal requirements to return overpayments even without publication of a final rule.

David Glaser, a shareholder at Fredrikson & Byron's health law group in Minneapolis, said he's not surprised to see the final rule's publication put off. The delay means the 10-year time frame is not yet a reality, he said. He said he would counsel providers that they now have to go back only 48 months, per federal regulations, though federal law says the government may go back as far as five years.

Mark Silberman, a partner at Duane Morris in Chicago, also said the delay could be good for providers in that it might mean the CMS will reconsider the 10-year proposal.

But the wait also means more uncertainty for providers, he said.

"If this extra period of time is utilized to effectively take into consideration concerns raised by providers and the industries that would be affected to appropriately reframe the time frame for exposure, then it would be great thing," Silberman said. "The flip side is, if it's just another year of uncertainty, then all of the risks associated with uncertainty come into play."

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